

# POST AUDIT DIVISION

## POST AUDITS SUBCOMMITTEE MEMBERS

SENATE MEMBERS  
President, Mitch Carmichael  
Ed Gaunch  
Roman Prezioso

HOUSE MEMBERS  
Tim Armstead, Speaker  
Timothy Miley  
Eric Nelson Jr.



JANUARY 7, 2017  
LEGISLATIVE LETTER REPORT

JOINT COMMITTEE ON  
GOVERNMENT & FINANCE

## DIVISION OF HIGHWAYS

### LEAVE PAYMENTS

### POST AUDIT STAFF CONTRIBUTORS

Denny Rhodes ..... Director  
Stan Lynch.....Deputy Director  
Nicholas Hamilton.....Senior Auditor  
Rita Rummel.....Auditor

**Note:** On Monday, February 6, 2017, the Legislative Manager/Legislative Auditor's wife, Elizabeth Summit, began employment as the Governor's Deputy Chief Counsel. Most or all the actions discussed and work performed in this report occurred after this date. However, the Governor's Deputy Chief Counsel was not involved in the subject matter of this report, nor did the audit team have any communications with her regarding the report. As Deputy Chief Counsel, the Legislative Auditor's wife is not in a policy making position within the Executive Branch. Therefore, the Post Audit Division does not believe there are any threats to independence with regard to this report as defined in A3.06.a and A3.06.b of the Generally Accepted Government Auditing Standards. Furthermore, the Legislative Auditor has instructed the Director of the Post Audit Division to document and discuss any issues he believes are a threat to the division's independence with the President of the Senate and the Speaker of the House due to Ms. Summit's position.

OFFICE OF THE  
LEGISLATIVE AUDITOR  
Legislative Manager & Legislative Auditor, Aaron Allred

# WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE

*Post Audit Division*

1900 Kanawha Blvd. East, Room W-329  
Charleston, WV 25305-0610  
(304) 347-4880



Denny Rhodes  
Director

January 7, 2018

The Honorable Mitch Carmichael, President  
West Virginia State Senate  
Post Audits Subcommittee, Co-Chair  
Room 229 M, Building 1  
State Capitol Complex  
Charleston, WV 25305

The Honorable Timothy Armstead, Speaker  
West Virginia House of Delegates  
Post Audits Subcommittee, Co-Chair  
Room 228 M, Building 1  
State Capitol Complex  
Charleston, WV 25305

Dear Mr. President and Mr. Speaker:

As part of the continuing audit of the West Virginia Division of Highways (DOH), the Legislative Post Audit Division conducted an analysis of the agency's policies and procedures to determine if they were in compliance with the West Virginia Division of Personnel's (DOP) Legislative Rule, Title 143, regarding overtime payments to employees during workweeks that also included annual and sick leave hours.

We determined that **DOH was not in compliance with Title 143 and improperly compensated 1,958 employees for annual and sick leave totaling more than \$432,000 during the 17-month period from July 1, 2016 through November 30, 2017.** These payments were the result of workweeks that included the use of sick and annual leave hours that, when combined with

the employees' work hours during the period, caused the total hours to exceed 40 for the workweek.

The payments of annual and sick leave hours under these circumstances violate Title 143, Series 1, Section 14.7 of the WV Division of Personnel's Legislative Rule, which states in part:

**14.7 Overtime Work and Holiday Work - ...Sick and/or annual leave requested in the same workweek in which additional hours are worked shall be reduced and credited back to the employee's accrued balances to reduce or avoid payment for hours in excess of the agency work schedule. (Emphasis Added)**

DOH did not follow the procedures outlined in the Division of Personnel's Administrative Rules for crediting back annual or sick leave to each employee's respective accrued leave balance in order to prevent unwarranted payroll expenses. Rather, DOH paid out the leave hours as extra compensation at the employee's regular hourly rate. The excess leave payments are detailed in the following table that follows:

Period	Excess Annual Leave Pay	Excess Sick Leave Pay	Total
July 1, 2016 – June 30, 2017 (FY 2017)	\$142,748	\$163,380	\$306,128
July 1, 2017 – Nov. 30, 2017 (FY 2018)	\$67,315	\$58,748	\$126,063
<b>TOTALS</b>	<b>\$210,063</b>	<b>\$222,128</b>	<b>\$432,191</b>
<i>Source: Data obtained from wvOASIS</i>			

The Department of Transportation's (DOT) policy regarding the payment of leave hours, when work hours and/or leave hours combined exceed 40 in one week, is inconsistent with the policy of the Division of Personnel quoted above. Volume III, Chapter 10, Section V-A, of DOT's Administrative Procedures states in part:

*...Leave with pay is not permitted after the employee has accumulated 40 hours of work time and/or paid leave during the workweek. If the employee performs work after the accumulation of 40 hours of work time and/or paid leave, any leave hours attributable to the first 40 hours are still paid.... (Emphasis Added)*

The DOT policy permits payment of leave hours if leave was taken prior to the total leave plus work hours exceeding 40 in the week. No such provision is provided for in the DOP policy. As a result, DOT policy conflicts with that of DOP.

The following table displays the three employees that received highest improper leave payout during Fiscal Year 2017:

Employee	Excess Annual Leave Pay	Excess Sick Leave Pay	Total Excess Sick & Annual Leave Pay
<b>1</b>	<b>\$2,442</b>	<b>\$0</b>	<b>\$2,442</b>
<b>2</b>	<b>\$169</b>	<b>\$1,520</b>	<b>\$1,689</b>
<b>3</b>	<b>\$383</b>	<b>\$912</b>	<b>\$1,295</b>

*Source: Data Obtained from wvOASIS*

Employees are entitled to extra pay in the form of overtime when their actual hours of work during a given pay period exceed the overtime pay threshold limit. The conceptual purpose of awarding employees overtime pay is distinct from the purpose of awarding hours of leave. Paid time off for annual and sick leave enables employees to receive their regular pay when they otherwise do not meet the required number of work hours during a prescribed work period due to approved absences.

By awarding leave and then permitting it to be paid out in addition to the employee’s weekly earnings, DOH is allowing de facto overtime payments for hours not actually worked by the employee. Employees were, in effect, permitted to convert leave into additional pay in excess of their regular salaries. While no accrued leave should be “paid out” prior to separation from employment, the issue is of more concern for sick leave since, unlike unused annual leave, employees are not permitted to convert unused sick leave into cash payments when their employment ends.

**Recommendations**

The Legislative Auditor recommends the Division of Highways comply with Title 143, Series 1, Section 14.7 of the Administrative Rule of the WV Division of Personnel and credit back

any annual leave or sick leave time to employees' accrued leave balances to reduce or avoid payment for hours accumulated in excess of the agency's regular workweek schedule.

Further, the Legislative Auditor recommends the Department of Transportation amend Volume III, Chapter 10, Section V-A, of DOT's Administrative Procedures to align with the Division of Personnel's Administrative Rule regarding the use of annual and sick leave when work hours, combined with annual and/or sick leave hours, exceed 40 hours in one workweek.

Sincerely,



Denny Rhodes